

The claimant appeared by and through her attorney, John J. Bryan of Topeka, Kansas. The respondent and its insurance carrier appeared by and through their attorney, Bret Owen of Topeka, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Matthew Crowley of Topeka, Kansas. There were no other appearances.

RECORD

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed matter, including the Motion Hearing transcript of May 18, 1994, before The Honorable James R. Ward, and the exhibits attached thereto.

ISSUES

- (1) Is the Fund entitled to an independent medical examination under K.S.A. 44-515?
- (2) Did the Administrative Law Judge exceed his jurisdiction in ordering medical mileage from claimant's residence on the date of accident rather than the date of treatment?
- (3) Did the Administrative Law Judge exceed his jurisdiction in granting an extension of terminal dates to the Workers Compensation Fund in this matter?
- (4) Does the Appeals Board have jurisdiction to hear this matter pursuant to K.S.A. 44-534a and K.S.A. 44-551?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds it does not have jurisdiction to hear these matters as these issues were properly before and decided by the Administrative Law Judge. Said preliminary findings will not be disturbed by the Appeals Board.

On August 11, 1993, Administrative Law Judge James R. Ward denied the Workers Compensation Fund the right to require claimant attend two independent medical examinations by Dr. Baker in Topeka, Kansas. This issue was appealed to the Shawnee County District Court. Judge Matthew Dowd, on January 13, 1994, reversed the Administrative Law Judge finding the independent medical examination by the Fund's appointed doctor, Dr. Baker, which required two examinations of the claimant was proper. As no appeal was taken from the District Court on this issue, this matter would not be properly before the Appeals Board for decision. The Appeals Board finds it does not have jurisdiction to consider the Fund's entitlement to an independent medical examination under K.S.A. 44-515 and the claimant's appeal on this issue is dismissed.

The Fund was also granted an extension of its terminal date through August 31, 1993, by the Court's Order of August 9, 1993. Claimant's failure to appear at the scheduled medical examinations caused the Administrative Law Judge to place this matter in abeyance.

K.S.A. 44-534a grants appeals from preliminary hearings when dealing with disputed issues involving whether the claimant suffered an accidental injury, whether the

injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply. As the issue regarding medical mileage reimbursement is clearly within the power of the Administrative Law Judge to decide and is not listed as an appealable issue from a preliminary hearing, the Appeals Board lacks jurisdiction to review same and the Administrative Law Judge's findings will not be disturbed.

Likewise, the Administrative Law Judge is properly in charge of the calendar dealing with terminal dates, that issue also not being listed in K.S.A. 44-534a as appealable from a preliminary hearing. As the Administrative Law Judge retains jurisdiction over his calendar and the Appeals Board lacks jurisdiction to review same, the Administrative Law Judge's decision regarding extension of terminal dates will not be disturbed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge James R. Ward, dated May 18, 1994, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of September, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John J. Bryan, PO Box 797, Topeka, KS 66601
Bret Owen, PO Box 2217, Topeka, KS 66601
Matthew Crowley, PO Box 4306, Topeka, KS 66604
James R. Ward, Administrative Law Judge
George Gomez, Director